

CHAPTER 182

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 19-1267

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AN ACT**CONCERNING CRIMINAL OFFENSES FOR FAILURE TO PAY WAGES, AND, IN CONNECTION THEREWITH, IMPLEMENTING RECOMMENDATIONS FROM THE COLORADO HUMAN TRAFFICKING COUNCIL.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) The Colorado human trafficking council, created pursuant to House Bill 14-1273, enacted in 2014, was established to improve services for victims of human trafficking, assist in the prosecution of human traffickers, and combat the unlawful practice of human trafficking;

(b) The nonpartisan 31-member Colorado human trafficking council, its staff, and its partner volunteers should be recognized for their public service, dedication, and work in studying the epidemic of labor trafficking in Colorado and in committing themselves to the eradication of human trafficking in all its forms;

(c) The Colorado human trafficking council's 2018 annual report to the general assembly found that:

(I) Between 2015 and 2017, state prosecutors filed 129 cases using the new human trafficking statutes, only one of which was for labor trafficking;

(II) Victims of labor trafficking, like those of sex trafficking, should not be seen as complicit in their victimization and are worthy of justice;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(III) Persons who commit the crime of human trafficking often commit other crimes such as wage theft, tax evasion, and workers' compensation fraud, which drains local and state resources, as well as denies the state its right to revenue;

(IV) A comprehensive approach is needed to address the crime of labor trafficking; and

(V) A bill enacted by the general assembly to recognize labor as a thing of value that can be subject to theft would aid law enforcement in combating the crime of labor trafficking.

(2) The general assembly acknowledges that not all victims of wage theft are victims of human trafficking. Studies have found that, apart from human trafficking, wage theft costs individual workers in Colorado hundreds of millions of dollars in wages and benefits each year and costs the state of Colorado tens of millions of dollars in revenue.

(3) Therefore, the general assembly declares that:

(a) It is in the public interest of the state to adopt the recommendation of the Colorado human trafficking council to codify that labor is a thing of value subject to theft to assist in the enforcement and prosecution of laws designed to combat labor trafficking, which is a form of modern-day slavery;

(b) Existing law, as interpreted by the Colorado supreme court in *Leonard v. McMorris*, 63 P.3d 323 (2003), does not provide sufficient protections for workers and their families; and

(c) In order to protect all workers, it is necessary to close loopholes that allow for the exploitation of human labor for profit.

SECTION 2. In Colorado Revised Statutes, 8-4-101, **amend** the introductory portion, (5), and (6); and **add** (8.5) as follows:

8-4-101. Definitions. As used in this ~~article~~ ARTICLE 4, unless the context otherwise requires:

(5) "Employee" means any person, including a migratory laborer, performing labor or services for the benefit of an employer. ~~in which the employer may command when, where, and how much labor or services shall be performed.~~ For the purpose of this ~~article~~, ARTICLE 4, RELEVANT FACTORS IN DETERMINING WHETHER A PERSON IS AN EMPLOYEE INCLUDE THE DEGREE OF CONTROL THE EMPLOYER MAY OR DOES EXERCISE OVER THE PERSON AND THE DEGREE TO WHICH THE PERSON PERFORMS WORK THAT IS THE PRIMARY WORK OF THE EMPLOYER; EXCEPT THAT an individual primarily free from control and direction in the performance of the service, both under his or her contract for the performance of service and in fact, and who is customarily engaged in an independent trade, occupation, profession, or business related to the service performed is not an "employee".

(6) "Employer" ~~means every person, firm, partnership, association, corporation,~~

~~migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof, of the above mentioned classes, employing any person in Colorado;~~ HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "FAIR LABOR STANDARDS ACT", 29 U.S.C. SEC. 203 (d), AND INCLUDES A FOREIGN LABOR CONTRACTOR AND A MIGRATORY FIELD LABOR CONTRACTOR OR CREW LEADER; ~~except that the provisions of this article shall~~ ARTICLE 4 DO NOT APPLY to the state or its agencies or entities, counties, cities and counties, municipal corporations, quasi-municipal corporations, school districts, and irrigation, reservoir, or drainage conservation companies or districts organized and existing under the laws of Colorado.

(8.5) "FOREIGN LABOR CONTRACTOR" MEANS ANY PERSON WHO RECRUITS OR SOLICITS FOR COMPENSATION A FOREIGN WORKER WHO RESIDES OUTSIDE OF THE UNITED STATES IN FURTHERANCE OF THAT WORKER'S EMPLOYMENT IN COLORADO; EXCEPT THAT "FOREIGN LABOR CONTRACTOR" DOES NOT INCLUDE ANY ENTITY OF THE FEDERAL, STATE, OR LOCAL GOVERNMENT.

SECTION 3. In Colorado Revised Statutes, 8-4-114, **amend** (2) as follows:

8-4-114. Criminal penalties. (2) In addition to any other penalty imposed by this ~~article~~ ARTICLE 4, any employer or agent of an employer who ~~being able to pay wages or compensation and being under a duty to pay;~~ willfully refuses to pay WAGES OR COMPENSATION as provided in this ~~article~~ ARTICLE 4, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, COERCE, delay, or defraud the person to whom such indebtedness is due, ~~is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.~~ For purposes of this section, "being able to pay wages or compensation" does not include an employer who is unable to pay wages or compensation by reason of a chapter 7 bankruptcy action or other court action that results in the employer having limited control over his or her assets. COMMITS THEFT AS DEFINED IN SECTION 18-4-401.

SECTION 4. In Colorado Revised Statutes, **amend** 8-6-116 as follows:

8-6-116. Violation - penalty. (1) The minimum wages fixed by the director, as provided in this ~~article, shall be~~ ARTICLE 6, ARE the minimum wages paid to the employees, and the payment to such employees of a wage less than the minimum so fixed is unlawful, and every employer or other person who INTENTIONALLY, individually or as an officer, agent, or employee of a corporation or other person, pays or causes to be paid to any such employee a wage less than the minimum ~~is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.~~ COMMITS THEFT AS DEFINED IN SECTION 18-4-401.

(2) FOR THE PURPOSE OF THIS SECTION, THE AMOUNT OF THE THEFT IS THE UNPAID

BALANCE OF THE FULL AMOUNT OF THE MINIMUM WAGE, AS DESCRIBED IN SECTION 8-6-118.

SECTION 5. Potential appropriation. Pursuant to section 2-2-703, C.R.S., any bill that results in a net increase in periods of imprisonment in state correctional facilities must include an appropriation of money that is sufficient to cover any increased capital construction, any operational costs, and increased parole costs that are the result of the bill for the department of corrections in each of the first five years following the effective date of the bill. Because this act may increase periods of imprisonment, this act may require a five-year appropriation.

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2020; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to offenses committed on or after the applicable effective date of this act.

Approved: May 16, 2019